IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-9133

Summary Calendar

FELIPE MIRANDA,

Petitioner-Appellant,

versus

WAYNE SCOTT, Director,
Texas Department of Criminal
Justice, Institutional Division

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CV-120-C)

(October 12, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[*]

Felipe Miranda appeals the district court's judgment denying the relief sought in Miranda's petition for writ of habeas corpus. Because Miranda's counsel employed sound trial strategy in refusing to allow Miranda to testify on his own behalf, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

A Texas jury convicted Miranda of aggravated assault. Miranda stabbed Joe Rios once with a knife. The prosecution presented testimony that Rios did not provoke the stabbing. A witness for the defense, however, testified that the stabbing occurred during a fight between Miranda and Rios. The trial court did not instruct the jury on the theory of self-defense, and defense counsel did not object to the jury instructions.

II.

Miranda claims that his counsel rendered constitutionally ineffective assistance because he did not allow Miranda to testify on the issue of self-defense. However, Miranda has prior convictions for aggravated assault and murder, and the trial court held that the convictions were admissible as impeachment evidence. Rather than place Miranda on the witness stand to face the possibility of being cross-examined concerning these two prior convictions, Miranda's counsel rested his case.

Miranda's attorney did not render constitutionally ineffective assistance of counsel. A decision not to place his client on the stand for fear of the impact that the convictions may have on the jury falls clearly "within the amorphous zone known as trial strategy or judgment calls." Hollenbeck v. Estelle, 672 F.2d 451, 454 (5th Cir.) (citation omitted), cert. denied, 459 U.S. 1019 (1982). An attorney's decision advising a client not to testify does not constitute ineffective assistance when it is reasonable to

conclude that the testimony would be more damaging than beneficial. Id. at 453-54.

AFFIRMED.